

NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 210691-U

NO. 4-21-0691

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 30, 2022
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macoupin County
RYAN D. BECK,)	No. 18CF159
Defendant-Appellant.)	
)	Honorable
)	Joshua Aaron Meyer,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in summarily dismissing defendant’s *pro se* postconviction petition.

¶ 2 In August 2019, defendant, Ryan D. Beck, was convicted of unlawful possession of a weapon by a felon, unlawful possession of methamphetamine, and armed violence. In October 2021, defendant filed a *pro se* postconviction petition, alleging his trial counsel provided him ineffective assistance of counsel for several reasons. For purposes of this appeal, we consider defendant’s claim concerning his counsel’s alleged failure to obtain surveillance video from the hospital parking lot where the police confronted defendant, took defendant into custody, and conducted an inventory search of a truck parked in the lot, which led to the charges in this case. On October 28, 2021, the trial court summarily dismissed defendant’s petition. Defendant appeals, arguing the court erred in summarily dismissing his postconviction petition because he presented

an arguable claim of ineffective assistance of trial counsel for counsel's failure to investigate surveillance video from the hospital parking lot, which could have corroborated his version of what happened in the parking lot. We affirm the summary dismissal of defendant's postconviction petition.

¶ 3

I. BACKGROUND

¶ 4 In June 2018, the State charged defendant by information with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2018)) and unlawful possession of methamphetamine (less than five grams) (720 ILCS 646/60(b)(1) (West 2018)). In October 2018, the State also charged defendant with armed violence (720 ILCS 5/33A-2(a) (West 2018)).

¶ 5 During defendant's bench trial, the State presented evidence the police responded to a request from an emergency room nurse to check on a vehicle parked in a portion of the hospital's parking lot that was not close to the emergency room, which was the only part of the hospital open at the time. Police officers in two separate vehicles responded to the scene. Officer Phillip Warren, who located defendant's vehicle, testified defendant was inside the vehicle when the officer arrived. Officer Jack Wofford ran the license plate on the suspect vehicle and determined it was registered to another vehicle.

¶ 6 According to testimony from the officers, defendant indicated he recently acquired the vehicle and was having trouble getting the truck titled in his name. Defendant had moved license plates from another vehicle he owned onto the truck. Defendant had the title to the truck, but his name was not on the title. Defendant said he had either purchased the truck or was in the process of purchasing the truck. The officers had defendant exit the vehicle. Defendant denied the officers' request to search the vehicle.

¶ 7 The officers then took defendant into custody for the registration and title

violations. In addition, because of the title and registration violations and the officers' inability to determine who owned the truck, the officers had the truck towed. Prior to the tow, the officers conducted an inventory search of the vehicle. During the search, the officers found suspected methamphetamine. They also found a .22-caliber handgun and ammunition for the gun behind the passenger seat, within reach of someone sitting in the driver's seat if the console/armrest was folded down. Behind the driver's seat, the officers found a homemade smoking device made from a Captain Morgan bottle. The police also recovered a backpack from the passenger seat containing defendant's business cards, smoking devices, components to make smoking devices, and more .22-caliber ammunition.

¶ 8 Initially, defendant denied knowing anything about the handgun in the truck but admitted he knew about the ammunition. He admitted the backpack was his but denied knowing anything about drugs or smoking devices in the truck and denied the contraband found inside the bag was his. The State presented testimony the handgun and ammunition were right next to each other. Defendant later admitted the smoking devices and drug paraphernalia were his, but he denied using the devices to ingest drugs. Defendant told the police he believed others had used the devices to smoke drugs. Defendant also told the police he liked to ride his bicycle at the hospital on a regular basis.

¶ 9 Defendant stipulated the Illinois State Police laboratory report dated July 16, 2018, indicated the white substance found in the truck tested positive for 0.5 grams of methamphetamine. The trial court also accepted evidence of defendant's prior felony conviction.

¶ 10 Defendant testified on his own behalf. In June 2018, he was not doing well financially and was in the process of buying the truck at issue here. The agreed upon price was \$800. Defendant had paid \$400, and a time had not been established for him to pay the remaining

\$400. Defendant parked the truck at different individual's respective homes at night and would leave the key inside the truck and the truck's door unlocked. Sometimes other people would use the truck and then park it various places. Defendant would then have to find the vehicle. He testified he did not thoroughly look through the vehicle each time he drove it. He also indicated he left personal belongings in the truck, including his tools, a toolbox, and his backpack. Prior to his arrest, his backpack had been unattended in the truck for a few days.

¶ 11 With regard to the night in question, defendant testified an individual named Ethan Lee told him the truck had been left at the hospital. Defendant had last seen the vehicle earlier that afternoon and did not know who left it at the hospital. He walked from his parents' house to the hospital. It was dark when he found the truck. Shortly thereafter, before he got in the truck, the police arrived. He also denied seeing the gun or methamphetamine inside the truck. He admitted he affixed license plates from another vehicle onto the truck.

¶ 12 On cross-examination, defendant testified someone must have left the .22-caliber handgun in the truck. He claimed he was not in complete possession of the truck and did not believe he could keep other people from driving it because he had not paid for it in full. Defendant also denied owning a vial found under the driver's seat but admitted an identical vial found in the backpack was his. He also denied ever being in the truck that night.

¶ 13 In rebuttal, Officer Wofford testified defendant never told him that he went to the hospital because someone else had left the truck there.

¶ 14 In a written decision, the trial court found defendant guilty of unlawful possession of a weapon by a felon, unlawful possession of methamphetamine, and armed violence. The court found Officers Wofford and Warren to be credible witnesses. The court did not find defendant's explanation of the events of June 11, 2018, to be credible.

¶ 15 On direct appeal, defendant argued the State presented insufficient evidence to convict him of armed violence and unlawful possession of a weapon by a felon. *People v. Beck*, 2021 IL App (4th) 190741-U, ¶ 26. This court accepted the trial court’s determination defendant’s testimony was not credible and found a rational trier of fact could have found defendant guilty. *Beck*, 2021 IL App (4th) 190741-U, ¶ 29. Defendant also argued he received ineffective assistance from his trial counsel because his attorney did not file a motion to suppress evidence recovered during the warrantless inventory search of the truck. *Beck*, 2021 IL App (4th) 190741-U, ¶ 38. This court found a motion to suppress would not have been granted based on the evidence in the case. Therefore, defendant could not establish his trial counsel was ineffective for not filing the motion to suppress evidence found during the inventory search. *Beck*, 2021 IL App (4th) 190741-U, ¶ 41.

¶ 16 In October 2021, defendant filed a *pro se* postconviction petition, alleging his trial counsel provided him ineffective assistance of counsel for refusing “to get video surveillance from [the] hospital as [defendant] requested,” failing to investigate who else had access to defendant’s truck, failing to move to suppress defendant’s testimony on account of defendant being under the influence of methamphetamine, and failing to ensure defendant had a fair trial.

¶ 17 On October 28, 2021, the trial court issued a written order summarily dismissing defendant’s petition. The court noted defendant provided no explanation why any of his allegations had merit. According to the court:

“For instance, he does not explain why his attorney’s failure to obtain hospital surveillance video or investigate certain issues mattered to his case. No explanation is provided for why the attorney’s failure to do something affected the trial in any way. The petition does not ‘clearly set forth the respects in which [defendant’s]

constitutional rights were violated' as required pursuant to 725 ILCS 5/122-2. Further, even if the allegations were sufficient, [defendant] provides little to no support through affidavits or documentation for any of his five claims. There is no supporting documentation to demonstrate his petition is capable of objective or independent corroboration. Instead, the allegations in the postconviction petition are bare and the attachments do not provide support. Section 122-2 requires that the petition 'have attached thereto affidavits, records, or other evidence supporting its allegations' or, alternatively, that the petition 'state why the same are not attached.' 725 ILCS 5/122-2. While [defendant] provided reasons why he did not have a signature notarized, he did not provide any reason for failing to have adequate affidavits, records, or other evidence supporting his allegations. This Court recognizes that [defendant] is *pro se* and presently in prison, but he must meet minimum requirements at this stage. [Defendant's] bare allegations and insufficient supporting evidence justifies summary dismissal of the petition. See *People v. Collins*, 202 Ill. 2d 59, 66 (2002).

[Defendant's] allegations of ineffective assistance of counsel do not show how trial counsel arguably fell below objective standards of reasonableness and how [defendant] was arguably prejudiced. The petition and attachments do not explain how trial counsel was deficient for failing to do the things [defendant] believes counsel should have done. The petition does not explain how [defendant] was prejudiced or harmed for trial counsel's failure to do these things. While this Court recognizes the postconviction petition is in the first stage and [defendant] is *pro se*, the allegations are insufficient to make an arguable claim of ineffective

assistance of counsel.”

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Defendant argues the trial court erred in summarily dismissing his *pro se* postconviction petition. According to defendant’s brief, his petition stated an arguable claim of ineffective assistance of trial counsel. Defendant’s *pro se* petition alleged his trial counsel was ineffective for several reasons. However, his arguments on appeal center on his counsel’s actions with regard to alleged video surveillance from the hospital.

¶ 21 The Post-Conviction Hearing Act (Postconviction Act) (725 ILCS 5/122-1 *et seq.* (West 2020)) provides a collateral path for a defendant to challenge his conviction or sentence based on a federal or state constitutional violation. *People v. Jones*, 211 Ill. 2d 140, 143, 809 N.E.2d 1233, 1236 (2004). The trial court in this case summarily dismissed defendant’s petition during the first stage of postconviction proceedings. We apply a *de novo* standard when reviewing the summary dismissal of a postconviction petition. *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010).

¶ 22 At the first stage of postconviction proceedings, the trial court must determine whether the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2020). “A post-conviction petition is considered frivolous or patently without merit only if the allegations in the petition, taken as true and liberally construed, fail to present the ‘gist of a constitutional claim.’ ” *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445 (2001).

¶ 23 When making an ineffective assistance of trial counsel claim in a postconviction petition, a petitioner is not required to make a complete showing of ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984), during the first stage of postconviction

proceedings. *People v. Hodges*, 234 Ill. 2d 1, 17, 912 N.E.2d 1204, 1212 (2009). Instead, the petitioner only has to show his counsel's performance arguably fell below an objective standard of reasonableness and defendant arguably was prejudiced. *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212.

¶ 24 Defendant's *pro se* petition alleged his trial counsel was ineffective for refusing "to get video surveillance from [the] hospital as [defendant] requested." Defendant attached two documents to his petition, which he cited as support for his claim. However, neither of these documents supported a claim his trial counsel was ineffective for not obtaining surveillance footage from the hospital. Instead, the documents only show defendant asked a police officer to look into whether any surveillance cameras at the hospital may have recorded his activities that night. The police officer testified he was not aware of any surveillance video that might have captured his activity that night.

¶ 25 Even assuming the truth of defendant's assertion he requested his attorney to get the surveillance video from the hospital, defendant did not allege in his *pro se* petition that his trial counsel did not investigate whether any surveillance footage existed and did not review the footage if it did exist. Defendant also did not allege his trial counsel did not explain to defendant why counsel was not obtaining surveillance footage from the hospital. In short, defendant provides no facts which show his trial counsel's representation was arguably deficient and arguably prejudiced defendant. Defendant's trial counsel could have had valid reasons for not obtaining any surveillance video from the hospital. For example, among other reasons, the surveillance cameras may not have been working, the recording may no longer have existed, the surveillance system may not have covered the part of the parking lot where defendant interacted with the police, or the surveillance footage may not have supported defendant's version of events.

¶ 26 Defendant's allegation his trial counsel was ineffective for refusing to get surveillance footage from the hospital, without any factual support, does not state the gist of a constitutional claim sufficient to survive summary dismissal. Pursuant to section 122-2 of the Postconviction Act (725 ILCS 5/122-2 (West 2020)), a "petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached." Our supreme court has indicated a defendant only needs to provide a limited amount of detail. Nevertheless, "[a] *pro se* petitioner is not excused *** from providing any factual detail whatsoever on the alleged constitutional deprivation." *Brown*, 236 Ill. 2d at 184, 923 N.E.2d at 754. In this case, defendant provided no factual detail tending to establish his counsel was arguably ineffective.

¶ 27 We note defendant on appeal argues his trial counsel failed to conduct any investigation into the surveillance video. As previously noted, defendant's *pro se* petition did not allege or provide any information indicating his trial counsel did not investigate whether the hospital had surveillance footage and, if so, what it showed. As a result, defendant's claim his trial counsel failed to investigate the surveillance footage may not be raised on appeal. See *Jones*, 211 Ill. 2d at 148, 809 N.E.2d at 1239 (holding an appellant may not raise an issue on appeal that was not included in his postconviction petition).

¶ 28 However, assuming, *arguendo*, we could read defendant's *pro se* petition as claiming trial counsel failed to investigate whether the hospital had surveillance footage from the night in question and to review the footage if it existed, we would still affirm the trial court's summary dismissal because defendant's petition included nothing indicating what the surveillance footage would have shown if it existed. As noted earlier, our supreme court has held a *pro se* postconviction petitioner only needs to provide a limited amount of detail. *Brown*, 236 Ill. 2d at

184, 923 N.E.2d at 754. However, “a *pro se* petitioner is not excused *** from providing any factual detail whatsoever on the alleged constitutional deprivation.” *Brown*, 236 Ill. 2d at 184, 923 N.E.2d at 754.

¶ 29

III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the trial court’s summary dismissal of defendant’s postconviction petition.

¶ 31 Affirmed.